IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO.258 OF 2002
IN
WRIT PETITION NO.3129 OF 2002

Shivparmatma Sahakari Doodh Vyavasaik Sanstha Ltd., ..Appellant

Versus

The Assistant Registrar, Co-op Societies,(Dairy), Kolhapur & Ors. ..Respondents

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Mr.V.B.Rajure for the appellant.

Mr.R.M.Patne, AGP for Respondent Nos.1 to 3.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 16.03.2005

PC

. Heard the learned Counsel for the appellant and the learned Asst.Government Pleader for Respondent Nos.1 to 3. None appears for Respondent No.4.

2. The appellant-Shivparmatma Sahakari Doodh Vyavasaik Sanstha Ltd., is the dairy Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act 1960. The society filed Writ petition before this Court challenging the order dated 11.8.2001 passed by the Minister of State Animal Husbandry and Dairy Development, Govt. of Maharashtra directing the

Assistant Registrar (Dairy) to accord recognition to the respondent no.4 society immediately. The learned single Judge before whom the Writ petition came up for consideration was of the view that though the impugned order was passed on 11.8.2001, the society approached this Court belatedly by filing Writ petition on 4.6.2002 and there was no explanation for delay. The learned single Judge was also of the view that in case registration was granted to the respondent no.4-society, it was always open to the petitioner-society to challenge such registration in appropriate proceedings. The Writ petition was, thus, rejected summarily by order dated 10.6.2002. Aggrieved thereby, the present appeal has been preferred.

3. The following order was passed by the Minister of State on the representation of the respondent no.4 :-

" Assistant Registrar (Dairy)
Accord recognition immediately."

4. Despite service, the respondent no.4 has not chosen to appear.

5. Section 4 of the Maharashtra Co-operative Societies Act, 1960 (for short ‘the Act’) makes

provision for registration of the societies under that Act. Section 4 reads thus :-

> 4. Societies which may be registered
>
> A society, which has as its objects the promotionof the economic interests or general welfare of its members, or of the public, in accordance will co-operate principles, or a society established with the object of facilitating the operations of any such society, may be registered under this Act ;
>
> . Provided that, no society shall be registered if it is likely to be economically unsound, or the registration of which may have an adverse effect on development [of the co-operative movement, or the registration of which may be contrary to the policy directives which the State Government may, from time to time, issue.]

6. Maharashtra Co-operative Societies Rules, 1961 (for short ‘the Rules of 1961’) provide for the procedure for registration of the societies. There is no dispute before us that the authority competent to register the society under Section 4 of the Act and the Rules of 1961 is the Assistant Registrar. Obviously, the Assistant Registrar has to follow the procedure prescribed under the Act and the Rules of 1961 before passing an order of registration of society or rejecting the application for registration of the society. The order that has been passed by the Minister of State directing the Assistant Registrar " Accord recognition

immediately" is clear interference in the statutory functions of the Assistant Registrar.

7. In our considered opinion the recommendation of the Minister of the State dated 11.8.2001 directing the Assistant Registrar (Dairy) to accord recognition to respondent no.4-society immediately is not only un-called for but legally unsustainable and impermissible.

8. The two reasons assigned by the learned single Judge for not entertaining the Writ petition, in our view, did not justify the rejection of the Writ petition. The Writ petition surely does not suffer from laches. The impugned order was passed by the concerned Minister on 11.8.2001 and the Writ petition was filed before this Court on 4.6.2002. By that time the Assistant Registrar (Dairy) had not taken any decision. The Writ petition therefore, did not suffer from laches and/or un-explained delay. The other reason given in the order that in the case of registration of respondent no.4 society, there was remedy available to the appellant to challenge such registration is not weighty in the facts and circumstances of the present case. The decision of the statutory functionary cannot be allowed to be influenced by the Minister. Moreover the statutory remedy of appeal and revision provided

in the Maharashtra Co-operative Societies Act 1960 would also lie before the forum subordinate to the State Government and therefore, such remedy cannot be said to be efficacious.

9. In the result, the appeal succeeds. The order passed by the learned single Judge on 10.6.2002 is set aside. The order dated 11.8.2001 passed by the Minister of State Human Welfare Dairy Development, Govt. of Maharashtra (Exh.B) annexed to the Writ petition is quashed. The Assistant Registrar (Dairy) shall consider the application made by the respondent no.4 for the registration of the society on its own merits and in accordance with law.

10. Since respondent no.4 has not chosen to appear, no costs.

(R.M.LODHA,J)

(R.S.MOHITE,J)